

Introduced by Senator Figueroa

February 20, 2003

An act to amend Sections 1785.11, 1785.11.1, 1798.84, and 1798.93 of, to add Sections 1798.955 and 1799.1b to, to add Title 1.81.2 (commencing with Section 1798.90.1) to Part 4 of Division 3 to, the Civil Code, and to amend Section 530.8 of the Penal Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 602, as introduced, Figueroa. Personal information.

(1) The Consumer Credit Reporting Agencies Act specifies when a consumer credit reporting agency may furnish a consumer credit report.

This bill would require a business that requests a consumer credit report from a consumer credit reporting agency to provide specified information about the consumer.

(2) The Consumer Credit Reporting Agencies Act permits a consumer to place a security alert in his or credit report by making a request in writing or by telephone to a consumer credit reporting agency.

This bill would provide for an unspecified penalty for a failure of a consumer credit reporting agency to place this security alert.

(3) Existing law requires any person or business that conducts business in the state to safeguard customer records, maintain a system of destruction of those records, and make a disclosure if the records are breached, as specified.

This bill would permit, upon a violation of these provisions, a recovery amount of not more than \$100,000 for each violation, in addition to any other remedy at law.

(4) Existing law permits a business to use information data encoded on a driver's license for verification purposes only.

This bill would prohibit the use of this information for marketing purposes or for usage in an electronic device that reads the personal information. The bill would make a violation of these provisions a crime, thereby imposing a state-mandated local program.

(5) Existing law permits a person to bring an action against a claimant to establish that the person is a victim of identity theft and not liable for the claimant's action.

This bill would permit the admissibility of victim impact statements to establish noneconomic damages. The bill would also require the court to keep that person informed of specified information about the action.

(5) Existing law prohibits business entities, as defined, from making specified disclosures in relation to individual records.

This bill would require a business entity that receives a change of address request from any individual who has an existing account with that entity to send specified change of address notices.

(6) Existing law permits a person who discovers that he or she may be a victim of identity theft to request specified reports.

Existing law would permit a cause of action for a failure of a person or entity to provide these reports and provide for penalties, as specified. The bill would also make specified statements of intent.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Identity Theft Victims' Bill of Rights.

3 SEC. 2. It is the intent of the Legislature to enact legislation
4 in the 2003–04 Regular Session that would strengthen the laws in
5 relation to identity theft, privacy rights, and consumer credit



1 reporting. This legislation shall include, but not be limited to, all
2 of the following:

3 (a) Enhancing sentences for repeat offenders of identity theft.

4 (b) Allowing for the aggregation of damages in any complaint
5 against perpetrators in identity theft cases, so those criminal
6 penalties can be appropriately linked to the sum total of economic
7 losses from multiple crimes or victims.

8 (c) Making criminal sentences for identity theft equal to or
9 greater than those of other similar offenses, such as theft or
10 forgery.

11 (d) Broadening the definition of venue for law enforcement
12 actions to include a location of convenience to the victim.

13 (e) Limiting the cost of security freezes for individuals seeking
14 to freeze their credit report as a preventative measure.

15 SEC. 3. Section 1785.11 of the Civil Code is amended to read:
16 1785.11. (a) A consumer credit reporting agency shall
17 furnish a consumer credit report only under the following
18 circumstances:

19 (1) In response to the order of a court having jurisdiction to
20 issue an order.

21 (2) In accordance with the written instructions of the consumer
22 to whom it relates.

23 (3) To a person whom it has reason to believe *is doing any of*
24 *the following*:

25 (A) Intends to use the information in connection with a credit
26 transaction, or entering or enforcing an order of a court of
27 competent jurisdiction for support, involving the consumer as to
28 whom the information is to be furnished and involving the
29 extension of credit to, or review or collection of an account of, the
30 consumer;~~or~~.

31 (B) Intends to use the information for employment purposes;
32 ~~or~~.

33 (C) Intends to use the information in connection with the
34 underwriting of insurance involving the consumer, or for
35 insurance claims settlements;~~or~~.

36 (D) Intends to use the information in connection with a
37 determination of the consumer's eligibility for a license or other
38 benefit granted by a governmental instrumentality required by law
39 to consider the applicant's financial responsibility or status;~~or~~.

1 (E) Intends to use the information in connection with the hiring
2 of a dwelling unit, as defined in subdivision (c) of Section 1940;
3 ~~or~~.

4 (F) Otherwise has a legitimate business need for the
5 information in connection with a business transaction involving
6 the consumer, *and the person requesting that report for the*
7 *business provides the consumer's full name, address, date of birth,*
8 *and social security number.*

9 (b) A consumer credit reporting agency may furnish
10 information for purposes of a credit transaction specified in
11 subparagraph (A) of paragraph (3) of subdivision (a), where it is
12 a credit transaction that is not initiated by the consumer, only under
13 the circumstances specified in paragraph (1) or (2), as follows:

14 (1) The consumer authorizes the consumer credit reporting
15 agency to furnish the consumer credit report to the person.

16 (2) The proposed transaction involves a firm offer of credit to
17 the consumer, the consumer credit reporting agency has complied
18 with subdivision (d), and the consumer has not elected pursuant to
19 paragraph (1) of subdivision (d) to have the consumer's name
20 excluded from lists of names provided by the consumer credit
21 reporting agency for purposes of reporting in connection with the
22 potential issuance of firm offers of credit. A consumer credit
23 reporting agency may provide only the following information
24 pursuant to this paragraph:

25 (A) The name and address of the consumer.

26 (B) Information pertaining to a consumer that is not identified
27 or identifiable with a particular consumer.

28 (c) Except as provided in paragraph (3) of subdivision (a) of
29 Section 1785.15, a consumer credit reporting agency shall not
30 furnish to any person a record of inquiries solely resulting from
31 credit transactions that are not initiated by the consumer.

32 (d) (1) A consumer may elect to have his or her name and
33 address excluded from any list provided by a consumer credit
34 reporting agency pursuant to paragraph (2) of subdivision (b) by
35 notifying the consumer credit reporting agency, by telephone or in
36 writing, through the notification system maintained by the
37 consumer credit reporting agency pursuant to subdivision (e), that
38 the consumer does not consent to any use of consumer credit
39 reports relating to the consumer in connection with any transaction
40 that is not initiated by the consumer.

(2) An election of a consumer under paragraph (1) shall be effective with respect to a consumer credit reporting agency, and any affiliate of the consumer credit reporting agency, on the date on which the consumer notifies the consumer credit reporting agency.

(3) An election of a consumer under paragraph (1) shall terminate and be of no force or effect following notice from the consumer to the consumer credit reporting agency, through the system established pursuant to subdivision (e), that the election is no longer effective.

(e) Each consumer credit reporting agency that furnishes a prequalifying report pursuant to subdivision (b) in connection with a credit transaction not initiated by the consumer shall establish and maintain a notification system, including a toll-free telephone number, that permits any consumer, with appropriate identification and for which the consumer credit reporting agency has a file, to notify the consumer credit reporting agency of the consumer's election to have the consumer's name removed from any list of names and addresses provided by the consumer credit reporting agency, and by any affiliated consumer credit reporting agency, pursuant to paragraph (2) of subdivision (b). Compliance with the requirements of this subdivision by a consumer credit reporting agency shall constitute compliance with those requirements by any affiliate of that consumer credit reporting agency.

(f) Each consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system under paragraph (1) of subdivision (e) jointly with its affiliated consumer credit reporting agencies.

SEC. 4. Section 1785.11.1 of the Civil Code is amended to read:

1785.11.1. (a) A consumer may elect to place a security alert in his or her credit report by making a request in writing or by telephone to a consumer credit reporting agency. "Security alert" means a notice placed in a consumer's credit report, at the request of the consumer, that notifies a recipient of the credit report that the consumer's identity may have been used without the consumer's consent to fraudulently obtain goods or services in the consumer's name.

1 (b) A consumer credit reporting agency shall notify each
2 person requesting consumer credit information with respect to a
3 consumer of the existence of a security alert in the credit report of
4 that consumer, regardless of whether a full credit report, credit
5 score, or summary report is requested.

6 (c) Each consumer credit reporting agency shall maintain a
7 toll-free telephone number to accept security alert requests from
8 consumers 24 hours a day, seven days a week.

9 (d) The toll-free telephone number shall be included in any
10 written disclosure by a consumer credit reporting agency to any
11 consumer pursuant to Section 1785.15 and shall be printed in a
12 clear and conspicuous manner.

13 (e) A consumer credit reporting agency shall place a security
14 alert on a consumer's credit report no later than five business days
15 after receiving a request from the consumer.

16 (f) The security alert shall remain in place for at least 90 days,
17 and a consumer shall have the right to request a renewal of the
18 security alert.

19 (g) *Notwithstanding Section 1785.19, any consumer credit*
20 *reporting agency that fails to place a security alert pursuant to this*
21 *section shall be liable for a penalty in an amount of up to ____*
22 *(\$____).*

23 SEC. 5. Section 1798.84 of the Civil Code is amended to read:

24 1798.84. (a) (1) Any customer injured by a violation of this
25 title may institute a civil action to recover damages.

26 (2) *In any suit brought pursuant to paragraph (1), any person*
27 *or business that has violated Section 1798.82 shall be liable to the*
28 *consumer for a civil penalty in an amount not more than one*
29 *hundred thousand dollars (\$100,000) for each violation, in*
30 *addition to any other remedy at law.*

31 (b) Any business that violates, proposes to violate, or has
32 violated this title may be enjoined.

33 (c) The rights and remedies available under this section are
34 cumulative to each other and to any other rights and remedies
35 available under law.

36 SEC. 6. Title 1.81.2 (commencing with Section 1798.90.1) is
37 added to Part 4 of Division 3 of the Civil Code, to read:

38

1 TITLE 1.81.2. CONFIDENTIALITY OF DRIVER'S
2 LICENSE INFORMATION
3

4 1798.90.1. (a) No business that uses the information data
5 encoded upon a state driver's license, as defined in Section 310 of
6 the Vehicle Code, or identification card issued pursuant to Section
7 13000 of the Vehicle Code or any similar provision of law, in order
8 to verify a person's identity or personal information for purposes
9 of conducting business with that person may, by electronic means
10 or otherwise, record, store, or retain that information, or use that
11 information for marketing purposes.

12 (b) No business may require that a person's state driver's
13 license or identification card be used in an electronic device that
14 reads the personal information encoded within.

15 (c) As used in this section, "business" means a proprietorship,
16 partnership, corporation, or any other form of commercial
17 enterprise.

18 (d) A violation of this section constitutes a misdemeanor
19 punishable by imprisonment in a county jail for no more than one
20 year, or by a fine of no more than ten thousand dollars (\$10,000),
21 or by both.

22 SEC. 7. Section 1798.93 of the Civil Code is amended to read:

23 1798.93. (a) A person may bring an action against a claimant
24 to establish that the person is a victim of identity theft in
25 connection with the claimant's claim against that person. If the
26 claimant has brought an action to recover on its claim against the
27 person, the person may file a cross-complaint to establish that the
28 person is a victim of identity theft in connection with the
29 claimant's claim.

30 (b) (1) A person shall establish that he or she is a victim of
31 identity theft by a preponderance of the evidence.

32 (2) *Victim impact statements are admissible to establish*
33 *noneconomic damages.*

34 (c) A person who proves that he or she is a victim of identity
35 theft, as defined in Section 530.5 of the Penal Code, as to a
36 particular claim, shall be entitled to a judgment providing all of the
37 following, as appropriate:

38 (1) A declaration that he or she is not obligated to the claimant
39 on that claim.

1 (2) A declaration that any security interest or other interest the
2 claimant had purportedly obtained in the victim's property in
3 connection with that claim is void and unenforceable.

4 (3) An injunction restraining the claimant from collecting or
5 attempting to collect from the victim on that claim, from enforcing
6 or attempting to enforce any security interest or other interest in
7 the victim's property in connection with that claim, or from
8 enforcing or executing on any judgment against the victim on that
9 claim.

10 (4) If the victim has filed a cross-complaint against the
11 claimant, the dismissal of any cause of action in the complaint filed
12 by the claimant based on a claim which arose as a result of the
13 identity theft.

14 (5) Actual damages, attorney's fees, and costs, and any
15 equitable relief that the court deems appropriate. In order to
16 recover actual damages or attorney's fees in an action or
17 cross-complaint filed by a person alleging that he or she is a victim
18 of identity theft, the person shall show that he or she provided
19 written notice to the claimant that a situation of identity theft might
20 exist, including, upon written request of the claimant, a valid copy
21 of the police report or the Department of Motor Vehicles
22 investigative report promptly filed pursuant to Section 530.5 of the
23 Penal Code at least 30 days prior to his or her filing of the action,
24 or within his or her cross-complaint pursuant to this section.

25 (6) A civil penalty, in addition to any other damages, of up to
26 thirty thousand dollars (\$30,000) if the victim establishes by clear
27 and convincing evidence all of the following:

28 (A) That at least 30 days prior to filing an action or within the
29 cross-complaint pursuant to this section, he or she provided
30 written notice to the claimant at the address designated by the
31 claimant for complaints related to credit reporting issues that a
32 situation of identity theft might exist and explaining the basis for
33 that belief.

34 (B) That the claimant failed to diligently investigate the
35 victim's notification of a possible identity theft.

36 (C) That the claimant continued to pursue its claim against the
37 victim after the claimant was presented with facts that were later
38 held to entitle the victim to a judgment pursuant to this section.

39 SEC. 8. Section 1798.955 is added to the Civil Code, to read:

1 1798.955. In any action brought pursuant to this title, the
2 court shall keep the person bringing the action informed of all of
3 the following:

4 (a) The status of the claim.

5 (b) The location, date, time, and nature of the court proceeding.

6 SEC. 9. Section 1799.1b is added to the Civil Code, to read:

7 1799.1b. Any business entity that receives a change of address
8 request from any individual that has an existing account with that
9 entity shall send a change of address notification to the previous
10 address of record and to the new address.

11 SEC. 10. Section 530.8 of the Penal Code is amended to read:

12 530.8. (a) If a person discovers that an application in his or
13 her name for a loan, credit line or account, credit card, charge card,
14 public utility service, or commercial mobile radio service has been
15 filed with any person or entity by an unauthorized person, or that
16 an account in his or her name has been opened with a bank, trust
17 company, savings association, credit union, public utility, or
18 commercial mobile radio service provider by an unauthorized
19 person, then, upon presenting to the person or entity with which
20 the application was filed or the account was opened a copy of a
21 police report prepared pursuant to Section 530.6 and identifying
22 information in the categories of information that the unauthorized
23 person used to complete the application or to open the account, the
24 person, or a law enforcement officer specified by the person, shall
25 be entitled to receive information related to the application or
26 account, including a copy of the unauthorized person's application
27 or application information and a record of transactions or charges
28 associated with the application or account. Upon request by the
29 person in whose name the application was filed or in whose name
30 the account was opened, the person or entity with which the
31 application was filed shall inform him or her of the categories of
32 identifying information that the unauthorized person used to
33 complete the application or to open the account. The person or
34 entity with which the application was filed or the account was
35 opened shall provide copies of all forms and information required
36 by this section, without charge, within 10 business days of receipt
37 of the person's request and submission of the required copy of the
38 police report and identifying information.

39 (b) Any request made pursuant to subdivision (a) to a person or
40 entity subject to the provisions of Section 2891 of the Public

1 Utilities Code shall be in writing and the requesting person shall
2 be deemed to be the subscriber for purposes of that section.

3 (c) (1) Before a person or entity provides copies to a law
4 enforcement officer pursuant to subdivision (a), the person or
5 entity may require the requesting person to submit a signed and
6 dated statement by which the requesting person does all of the
7 following:

8 (A) Authorizes disclosure for a stated period.

9 (B) Specifies the name of the agency or department to which
10 the disclosure is authorized.

11 (C) Identifies the types of records that the requesting person
12 authorizes to be disclosed.

13 (2) The person or entity shall include in the statement to be
14 signed by the requesting person a notice that the requesting person
15 has the right at any time to revoke the authorization.

16 (d) (1) *A failure to produce records pursuant to subdivision (a)*
17 *shall be addressed by the court in the jurisdiction that the victim*
18 *resides in and where the request for information was issued from.*
19 *Following a hearing, the court may consider a failure to produce*
20 *the records as contempt of court and for unlawfully interfering with*
21 *the court's process and proceedings. The court shall hear and*
22 *decide that motion no later than 10 court days after the motion is*
23 *filed.*

24 (2) *In addition to any other civil remedy available, the victim*
25 *may bring a civil action against the entity for compensatory*
26 *damages and injunctive relief or other equitable relief.*
27 *Compensatory damages shall be set at an amount that is the*
28 *greater of the following:*

29 (A) *Five thousand dollars (\$5,000).*

30 (B) *Three times the amount of actual damages, if any sustained*
31 *by the victim due to a failure to produce the requested information,*
32 *plus reasonable attorneys' fees.*

33 (e) As used in this section, "law enforcement officer" means
34 a peace officer as defined by Section 830.1 of the Penal Code.

35 ~~(e)~~

36 (f) As used in this section, "commercial mobile radio service"
37 means "commercial mobile radio service" as defined in section
38 20.3 of Title 47 of the Code of Federal Regulations.

39 SEC. 11. No reimbursement is required by this act pursuant
40 to Section 6 of Article XIII B of the California Constitution

1 because the only costs that may be incurred by a local agency or
2 school district will be incurred because this act creates a new crime
3 or infraction, eliminates a crime or infraction, or changes the
4 penalty for a crime or infraction, within the meaning of Section
5 17556 of the Government Code, or changes the definition of a
6 crime within the meaning of Section 6 of Article XIII B of the
7 California Constitution.

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